

News from Ed Markey

United States Congress

Massachusetts Seventh District

FOR IMMEDIATE RELEASE

April 10, 2003

CONTACT: Israel Klein

or Mark Bayer

(202) 225-2836

MARKEY PUTS A "STOHP" TO HEALTH PRIVACY ROLLBACKS ***STOP TAKING OUR HEALTH PRIVACY (STOHP) ACT RESPONDS TO*** ***PRIVACY LOOPHOLES EFFECTIVE APRIL 14***

Washington, DC: Representative Edward J. Markey (D-MA), a senior member of the House Energy and Commerce Committee and Co-Chair of the House Privacy Caucus, today introduced H.R. 1709, the bipartisan Stop Taking Our Health Privacy (STOHP) Act, to restore key privacy protections weakened by modifications to the medical privacy rule that become effective on April 14, 2003. Rep. Markey was joined in introducing the STOHP Act by Representative Dana Rohrabacher (R-CA), chairman of the Science Subcommittee on Space and Aeronautics; Representative Henry Waxman (D-CA), ranking member of the Government Reform Committee; and Representative John Dingell (D-MI), ranking member of the Energy and Commerce Committee.

"The right to keep your personal medical history private is a non-partisan issue that is cherished by a large majority of Americans. Today, I am pleased to introduce a bill that has the support of Members from both sides of the aisle. The STOHP Act reverses damage done to the medical privacy prerogatives of patients who wish to retain control over how their personal medical information is used or disclosed," Rep. Markey said.

"The next time you receive a treatment recommendation from your pharmacy, you should not have to wonder whether the pharmacist is acting as a secret agent for a drug company," Rep. Markey said. "The modifications made to the privacy rule, which become effective on Monday April 14th, have effectively miniaturized the marketing definition so that many marketing schemes will continue. For example, the new marketing definition allows a drug company to disguise its marketing pitch as objective medical advice. Marketing, by any other name, still involves payment for the promotion of a product, whether it relates to health or not. When a pharmacist sends out unsolicited health-related mailers and gets paid for doing it, this is marketing, and consumers should get the complete story, not Cliff Notes that leave out the details" Rep. Markey said.

The STOHP Act restores three vital privacy protections that were weakened by the modifications.

1. **Consent:** The STOHP Act reinstates the requirement that patients must give their permission before their personal medical information can be used or disclosed for treatment, payment, or so-called "health care operations." This third category includes sales, mergers and other commercial transactions between health plans. To ensure that the consent requirement does not impede important health care activities, The STOHP Act includes commonsense exceptions to the consent requirement for such purposes as filling a prescription and making referrals. The modifications that become effective on April 14, 2003 completely eliminate the consent requirement for treatment, payment, and health care operations.
2. **Marketing:** The STOHP Act expands the narrow definition of "marketing" established by the modifications to the privacy rule. The modifications permit a drug company to pay a pharmacy to identify its customers who are taking a particular medication and then mail these customers

recommendations that they switch to the drug company's brand without informing the customers of its financial ties to the drug company, notifying the customer of the source of the communication or providing them the choice to opt-out of receiving such communications in the future. While this arrangement is not considered "marketing" under the modifications, the STOHP Act classifies such activities as marketing and subjects them to the requirements contained in the medical privacy rule prior to its modification (e.g., information about payment, notice of source, and opportunity to opt-out).

3. **Disclosures to FDA-regulated entities such as drug companies:** The STOHP Act, like the pre-modification (i.e., December 2000) medical privacy rule, permits nonconsensual use and disclosure of patient health information to these entities only for a limited list of public health related activities, such as for the purpose of reporting serious side effects from a prescription drug to the FDA. The modifications replaced this narrow list with a broader exemption that allows nonconsensual disclosure of patient information to drug companies for a wide range of activities, which may include marketing campaigns.

"The STOHP Act seeks to close three massive 'privacy peepholes' into patients' private medical information that were opened by the modifications to the medical privacy rule that become effective on April 14: elimination of consent, evisceration of the marketing definition, and expansion of permissible nonconsensual disclosures to FDA-regulated entities such as drug companies. As health care becomes increasingly complex and automated, I will continue to work to restore fundamental patient privacy protections, which are essential for the delivery of quality care," Rep. Markey said.

#